

RAJASTHAN HIGH COURT

Paras Ram

Vs.

Brijendra Singh

S.B.Civil Revision Petition No. 112 of 2008

(Dalip Singh, J.)

08.04.2009

JUDGMENT

Dalip Singh, J.

1. Heard learned counsel for the parties.

2. The grievance of the petitioners in this revision petition is that the learned trial court could not have passed the order while allowing the application under Order 39 Rule 2A C.P.C. in the manner in which it has been passed for directing the petitioner to restore the status quo as it existed prior to the passing of the order of temporary injunction on 22.03.1986 as per the report of the Commissioner dated 19.03.1986. The said order reads as follows:-

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3. The aforesaid order was challenged by the petitioners in appeal. The learned appellate court vide judgment (Annexure-3) dated 16.05.2008 after considering the submissions made by the petitioners dismissed the appeal and passed the following order:-

4. Learned counsel for the petitioners, in this revision petition sought to challenge both the orders by which the petitioners had been found guilty of having committed the breach of the order of temporary injunction dated 22.03.1986 and ordering for restoring the status quo ante.

5. So far as the submission with regard to the aforesaid aspect is concerned, I am of the view that in the revisional jurisdiction the findings of fact arrived at by the learned courts below i.e. the learned trial court and the appellate court on the aforesaid cannot

be interfered with as they are concurrent findings of fact.

6. The second submission of the learned counsel for the petitioner is that under the provisions of Order 39 Rule 2A C.P.C., the learned trial court could not have passed the order for restoring the status quo as it existed as per the report of the Commissioner on 19.03.1986 as it had no such jurisdiction in exercise of powers conferred by Rule 2A of Order 39 C.P.C.

7. I have heard learned counsel for the petitioner and perused the impugned order dated 06.03.2002 passed by the learned trial court in this behalf. The learned trial court while allowing the application under Order 39 Rule 2A C.P.C. has passed the order in the following terms :-

"(i) that the condemners-petitioners would within a period of one month restore the property in the position as it existed in accordance with the report of the Commissioner dated 19.03.1986 at his own cost;

(ii) that each of the condemners-petitioners would pay compensation of Rs. 500/- each to the plaintiff-applicant;

(iii) that in the event of non-compliance of the aforesaid order, the plaintiff-applicant was given the liberty to restore the property in the same position as it exists on 19.03.1986 as per the report of the Commissioner at his own costs; and

(iv) that the liability for the expenses incurred by the plaintiff applicants would be on the contemnors. "

8. To appreciate the aforesaid contention of the learned counsel for the petitioners in the light of the directions issued it is necessary to look into the provisions of Rule 2A of Order 39 C.P.C. Order 39 Rule 2A C.P.C. reads as follows :-

"2A. Consequence of disobedience or breach of injunction.- (1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the

property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."

9. A look at the above provision goes to show that once a court finds a person guilty of the breach of any order passed under Order 39 Rule 1 and 2 C.P.C. it may order that the property of the person guilty of such disobedience or breach to be attached and in addition to the above may also order such person to be detained in the civil prison for a term not exceeding three months. Sub-rule (2) further provides that attachment shall remain in force only for a period of one year and if at the end of the aforesaid year, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the court may award such compensation to the injured party as it considers fit.

10. This court in the case of *Bindu Khan v. Samee Khan reported* ¹ in had occasion 5 to deal with the aforesaid provisions of Order 39 Rule 2A C.P.C. and this court held in para 6 as follows :-

"6. In exercise of its powers under Section 115 C.P.C. this Court is not to interfere with the concurrent findings of the facts recorded by the Court below, if such finding is based on the material on record."

11. The above view has been followed by this court while dealing with the submission of the learned counsel for the petitioner hereinabove.

12. Thereafter, dealing with the provisions of Rule 2A of Order 39 C.P.C. in para 8 of the said report it was held as follows:-

"8. It may be noted that consequent upon disobedience of the order of the Court, passed under Rules 1 and 2, the Court may order the property of the person guilty of such disobedience or breach to be attached. Further power of the Court is that it may also order such person to be detained in the civil prison for a term not exceeding three months. It may be noted that between the phrase "may order the property of the person guilty of such disobedience or breach to be attached" and "may also order such person to be detained in the civil imprisonment for a term not exceeding three months" the conjunction "and" has been used. Use of conjunction "and" suggests that the Court may pass two types of orders in case of disobedience or breach of its injunction orders. The Court may pass (i) an order attaching the property of the person guilty of disobedience or breach of order and (ii) may also pass an order detaining the contemner in the

civil prison. The use of conjunction "and" in the language of the two 6 phrases indicates the type of orders which a Court may pass under Rule 2-A(1) of Order 39 C.P.C. *Prima facie* conjunction "and" does not suggest that it should be read in sense of the conjunction "or" so as to enable the Court to pass either of the two types of the order in the alternate according to his discretion. The sequence used in the language of Rule 2-A of Order 39 in the context of the orders that may be passed by the Court in consequence of disobedience or breach of the injunction suggests that in the first instance the Court should pass an order attaching the property of the contemner. In this behalf it may be noted that sub-rule (2) of Rule 2-A says that the attachment made under sub-rule (1) shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto. The mandate contained in sub- rule (2) of Rule 2- A suggest that the main purpose of sub-rule (2-A) is to enforce the obedience of the injunction order by the party against which such order has been passed. The requirement of attachment of his property and in the event of continuance of disobedience or breach of the order the sale of the property and the appropriation of the sale proceeds to awarding compensation to the aggrieved party suggest that in the first instance the Court should ordinarily attach the property of the contemner in order to enforce him to obey and carry out the injunction order passed by it." (Emphasis supplied.)

13. From the above interpretation of Rule 2A, it is clear that in the instant case, the learned trial court by the order dated 06.03.2002 granted a month's time to the contemnors, the petitioners herein, to restore the position of status quo ante of the property in dispute as it existed on 19.03.1986 as mentioned in the report of the Commissioner.

14. The main grievance of the petitioners is that the learned trial court had no jurisdiction to pass the said order directing status quo ante as it existed on 19.03.1986 in exercise of powers conferred under Rule 2A of the Order 39 C.P.C.

15. I am in agreement with the submission of the learned counsel for the petitioners to some extent, as the order impugned dated 06.03.2002 is not strictly in accordance with the provisions laid down under Rule 2A of Order 39 C.P.C. In substance though the order amounts to the same.

16. As has been seen above and decided by this court in Bindu Khan's case (supra)

once the court comes to the conclusion that breach of the order is committed, it has the jurisdiction to pass an order of attachment of the property of the contemner and at the same time for the detention of the contemner in civil prison.

17. In the instant case, the learned trial court did not pass an order of attachment of the property and simply granted a month's time to the contemnners-petitioners to restore the position as it existed on 19.03.1986. A combined reading of sub-rule (1) and (2) of Rule 2A of Order 39 C.P.C. clearly suggests and as has been held by this court in Bindu Khan's case (supra) that the court is entitled to proceed against the contemner by attaching the property though the order of such attachment shall not exceed a period of one year. But the important words, so far as the submission raised by the learned counsel for the petitioners in the present case are concerned, are in sub-rule (2) of Rule 2A of Order 39 C.P.C. that "if the disobedience or breach continues the property attached may be sold and out of the proceeds, the court may award such compensation as it thinks fit to the injured." Thus, the significance of the words "if the disobedience or breach continues" emphasizes that the contemner having been found guilty and once an order of punishment has been passed can be directed to obey the directions contained in the order of temporary injunction passed under Order 39 Rule 1 and 2 C.P.C. as in sub-rule (2) the important words are "if the disobedience or the breach continues" suggest that the contemner is under an obligation to comply and purge himself of the contempt. Failure to do so would entail the consequences as provided under sub-rule (2) of Rule 2A of Order 39 C.P.C. i.e. sale of the attached property and payment of compensation to the injured party. This indicates that failure to comply with the order of temporary injunction, the injured party can be permitted to restore the status quo ante and claim the compensation and cost for the expenses incurred. Thus, the order passed by the learned trial court though without the attachment of the property of the petitioner and merely directing the contemnners to restore the status quo as it existed in accordance with the report of Commissioner dated 19.03.1986 is in fact in conformity with the Rule 2A of Order 39 C.P.C.

18. Be that as it may since the petitioners have challenged the aforesaid order on the ground that it is not in conformity with the provisions of Rule 2A, Shylock shall have his pound of flesh but without shedding a drop of blood.

19. In view of the aforesaid submission of the learned counsel for the petitioners, it is directed while modifying the order passed by the learned trial court to the limited extent and bringing the same in conformity with the provisions of Order 39 Rule 2A C.P.C. that the property of the petitioners shall remain attached for a period of one

year from today, during which period the petitioners shall be at liberty to comply with the directions contained in the order passed by the learned trial court of restoring the status quo ante and restore the property in the condition in accordance with the report of Commissioner dated 19.03.1986. If within the aforesaid period of one year, the breach still continues and the petitioners fail to comply with the directions of the learned trial court, the property of the petitioners shall be liable to be sold by the order of the learned trial court in accordance with sub-rule (2) of Rule 2A of Order 39 C.P.C. and at the end of the aforesaid sale, it would be open for the court to award such compensation to the injured, as it thinks fit while permitting the plaintiff/non-applicant to restore the property in the position in which it was on 19.03.1986 as per the report of the commissioner and claim cost and expenses for the same from the petitioner out of the sale proceeds.

Subject to the aforesaid, this revision petition as well as the stay application stand disposed of.

Cases Referred.

1. AIR 1998 Raj 115

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